

Forest Service, USDA

§ 215.16

the Responsible Official's original decision was affirmed or reversed, in whole or in part.

§ 215.14 Content of an appeal.

(a) It is the appellant's responsibility to provide sufficient written evidence and rationale to show why the Responsible Official's decision should be remanded or reversed.

(b) An appeal submitted to the Appeal Deciding Officer becomes a part of the appeal record. An appeal must meet the following requirements:

(1) State that the document is an appeal filed pursuant to 36 CFR part 215;

(2) List the name and address of the appellant and, if possible, a telephone number;

(3) Identify the decision document by title and subject, date of the decision, and name and title of the Responsible Official;

(4) Identify the specific change(s) in the decision that the appellant seeks or portion of the decision to which the appellant objects;

(5) State how the Responsible Official's decision fails to consider comments previously provided, either before or during the comment period specified in § 215.6 and, if applicable, how the appellant believes the decision violates law, regulation, or policy.

§ 215.15 Dismissal of appeal without review.

(a) An Appeal Deciding Officer shall dismiss an appeal without review when:

(1) The appeal is not postmarked or the facsimile is not date imprinted within the 45-day appeal filing period in accordance with § 215.13;

(2) The requested relief or change cannot be granted under law, fact, or regulation;

(3) The decision at issue is being appealed by the appellant under another administrative proceeding;

(4) The decision is excluded from appeal pursuant to § 215.8;

(5) The appellant did not express an interest in the specific proposal at any time prior to the close of the comment period specified in § 215.6;

(6) The Responsible Official has withdrawn the decision being appealed; or

(7) The appellant has filed for Federal judicial review of the decision and the

Chief has waived the argument in § 215.20.

(b) The Appeal Deciding Officer shall give written notice to the appellant, interested parties, and Responsible Official that an appeal is dismissed and state the reasons for dismissal.

§ 215.16 Informal disposition.

(a) *Offer to meet.* When a decision is appealed under this part, the Responsible Official must contact the appellant(s) and offer to meet and discuss resolution of the issues raised in the appeal. This contact shall be made as soon as practicable after an appeal has been filed.

(b) *Time and location of meeting.* If one or more appellants agree to meet, the meeting(s) must take place not later than 15 days after the closing date for filing an appeal. The location of the meeting shall be in the vicinity of the lands affected by the decision. When the District Ranger is the Responsible Official, meetings will generally be located on or near that Ranger District. When the Forest Supervisor or Regional Forester is the Responsible Official, meetings will generally take place at a location within or near the National Forest.

(c) *Type of meeting.* Generally, participants shall be physically present at informal disposition meetings. Where an appellant cannot attend a meeting in person because of schedule conflicts or travel distances, alternative types of meetings (such as telephone conferences or video conferences) may be arranged. This alternative type meeting also must take place not later than 15 days after the closing date for filing an appeal. The informal disposition meeting must be open to interested parties and the public.

(d) *Agreement on disposition.* The Responsible Official must notify the Appeal Deciding Officer of the names of meeting participants and the outcome of the informal disposition meeting.

(1) If the appellant(s) and Responsible Official reach agreement on disposition of the appeal, the Responsible Official shall so notify the Appeal Deciding Officer and the appellant shall withdraw the appeal by letter to the Appeal Deciding Officer no later than 15 days after the meeting. Upon notice from

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the appellant that the appeal has been withdrawn, the Appeal Deciding Officer shall notify the interested parties, Appeal Reviewing Officer, and Responsible Official of the conclusion of the appeal.

(2) If, as a result of the agreement reached at the informal disposition meeting, new information is received or changes to the original project decision or environmental analysis are proposed, the Responsible Official must follow the procedures in the Environmental Policy and Procedures Handbook, FSH 1909.15, section 18.

(e) *Failure to reach agreement.* If the appeal is not resolved through the informal disposition meeting, the Responsible Official shall so notify the Appeal Deciding Officer in writing. The Appeal Deciding Officer shall then advise the Appeal Reviewing Officer to proceed with formal review of the appeal.

§215.17 Formal disposition.

(a) *Formal disposition period.* The Appeal Deciding Officer shall issue an appeal decision not later than 45 days after the end of the appeal filing period.

(b) *Appeal decision.* The Appeal Deciding Officer shall complete a review based on the appeal record as defined in §215.2 and the Reviewing Officer's recommendation. The Appeal Deciding Officer shall issue a written appeal decision either affirming or reversing the Responsible Official's decision, in whole or in part, and may include instructions for further action. The Appeal Deciding Officer shall send a copy of the appeal decision to the appellant, interested parties, the Appeal Reviewing Officer, and the Responsible Official. If a formal decision is not issued, the Appeal Deciding Officer shall notify the appellant(s) of the disposition of their appeal.

§215.18 Appeal deciding officer authority.

(a) *Consolidation of appeal decisions.* In cases involving multiple appeals of a decision subject to this part, the Appeal Deciding Officer shall determine whether to issue one appeal decision or separate appeal decisions.

(b) *Procedural decisions.* The Appeal Deciding Officer shall make all procedural determinations in this part. Such determinations are not subject to further administrative review.

(c) *Appeal decisions.* The Appeal Deciding Officer's decision constitutes the final administrative determination of the Department of Agriculture.

§215.19 Appeal reviewing officer authority.

(a) *Identification of Appeal Reviewing Officer.* An agency official at the Regional Office level designated by the Chief is the Appeal Reviewing Officer for appeals of District Ranger and Forest Supervisor decisions. An agency official at the Washington Office level designated by the Chief is the Appeal Reviewing Officer for appeals of Regional Forester Decisions. The Appeal Reviewing Officer shall be an officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal and has not participated in the initial decision and will not be responsible for implementing the initial decision after the appeal is decided.

(b) *Scope of review.* The Appeal Reviewing Officer's review of decisions under this part focuses on decision documentation developed by the Responsible Official in reaching the decision, issues raised in the appeal, and comments submitted by interested parties.

(c) *Consolidation of recommendations.* In cases involving multiple appeals of a decision subject to this part, the Appeal Reviewing Officer shall determine whether to issue one recommendation or separate recommendations.

§215.20 Policy in event of judicial proceedings.

Unless waived in a specific case, it is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to review under this part is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the procedures available under this part.

§215.21 Applicability and effective date.

(a) The requirements of §215.5 of this part to provide notice and opportunity